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before the

SUBCOMMITTEE ON THE FEDERAL WORKFORCE
AND AGENCY ORGANIZATION
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

TENSION IN THE TINDERBOX:
FINDING FAIRNESS FOR FEDERAL FIREFIGHTER COMPENSATION

AUGUST 12, 2005

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today on behalf of the Office of Personnel Management (OPM) to discuss the issue of compensation for Federal employees who perform emergency functions, and to provide the Administration's views on compensation for Federal wildland firefighters generally and, more specifically, on H.R. 408, the Federal Wildland Firefighter Emergency Response Compensation Act of 2005.

We, at the Office of Personnel Management, recognize the importance of the work performed by Federal wildland firefighters and by their State, local, and Tribal government colleagues. We respect the difficulties inherent in the complex and intense situations they address, and I want to express our appreciation for their efforts.

You asked that we address the classification, pay, and compensation of wildland firefighters generally, as well as providing the Administration's views on H.R. 408.

In reviewing the classification of wildland firefighters, it might be useful to discuss the differences between their duties and responsibilities and those of structural firefighters.

Wildland firefighters are employed by the Forest Service and the Department of the Interior to control, extinguish, prevent, and manage wildland fires. While some wildland firefighters are employed year round, the larger number of them are employed on a seasonal basis. Most are employed under the General Schedule (GS) as GS-462 Forestry Technicians, or GS-455 Range Technicians. When actively fighting fires, they must serve at the site of the fire and work shifts that extend well beyond the typical 8-hour work day. They stay at a base camp during off-duty hours for sleep and meals and other personal

activities. About 85 percent of wildland firefighters are classified in grades GS-5 through GS-9. Their classification is based primarily on their forestry duties, as opposed to their firefighting duties.

Structural firefighters classified in the GS-081 series provide round-the-clock fire protection at certain Federal installations. About 94 percent of them are employed by the Department of Defense and serve at military installations. In addition, they generally provide paramedic support and hazardous material controls in the communities they serve and protect. They typically work 24-hour shifts that include sleep, meals, and other personal standby time. Most have a 72-hour workweek consisting of three 24-hour shifts. Because sleep and personal time is included in their duty shift, GS-081 firefighters receive a lower hourly rate of basic pay than other employees. Roughly 85 percent of GS-081 structural firefighters are at grades GS-5 through GS-9. Their classification is based on firefighting duties as well as duties related to emergency medical services and hazardous material controls.

With regard to premium pay, there are additional differences between the two categories of employees. GS-081 firefighters have no overtime pay entitlement until they have worked 53 hours in a week or 106 hours in a biweekly pay period. This special overtime standard is consistent with the standard established for firefighters under the Fair Labor Standards Act (FLSA). For GS-081 firefighters who are FLSA-exempt, the overtime rate of pay is capped at one and one-half times the rate for GS-10, step 1, or the employee's regular rate of basic pay, whichever is higher. The overtime rate of pay for GS-081 firefighters subject to FLSA is not similarly capped.

Wildland firefighters, on the other hand, whether FLSA-exempt or not, receive overtime pay after 8 hours in a day or 40 hours in a week, even while assigned to fight fires. They are not subject to any cap on the hourly rate of overtime pay while engaged in emergency wildland fire suppression activities.

Hazard pay is payable to wildland firefighters at the rate of 25 percent when they are on the fire line. In fact, if they are exposed to a hazard at any time during a day, wildland firefighters receive hazard pay for all time in a pay status. In contrast, hazard pay generally is not payable to GS-081 structural firefighters, since the typical hazards of firefighting are taken into account in the classification of their job.

Now let me turn to H.R. 408, the "Federal Wildland Firefighter Emergency Response Compensation Act of 2005. As you are aware, Mr. Chairman, the Administration's views on H.R. 408 have recently been provided to you in a letter from Linda Springer, the Director of OPM. In general terms, the Administration is unable to support H.R. 408. In determining our position on H.R. 408, we are governed by three basic principles. First we need to address the merits of the proposal based on the objectives that must be met to achieve a particular mission. Second, we must try to maintain some level of equity among various groups of Federal employees who face similar challenges. Finally, we are obligated to ensure taxpayer dollars are being spent efficiently and effectively to achieve results for the American people.

Section 2 of that bill would amend the current law to provide “portal-to-portal” compensation for wildland firefighters. It appears the intent is to mandate that wildland firefighters be in a duty and pay status for all hours they are away from their normal duty locations to fight wildland fires. This change would violate each of the three principles stated which are governing our review of legislative proposals. We do not find compelling evidence that such a change is necessary to meet mission objectives. Pay must be set to assure that the Federal Government is able to recruit and retain the employees it needs to meet its mission. Where there is no indication that pay levels are producing significant and widespread recruitment or retention problems, we cannot justify large, general increases in pay.

In fiscal years 2002 through 2004, the quit rate for full-time permanent, nonseasonal wildland firefighters ranged from 2.1 to 2.5 percent, which is relatively low. The quit rate for seasonal wildland firefighters is somewhat higher—roughly 5 to 7 percent over the last few years—as one would expect for any seasonal workforce. To the extent there are staffing problems in particular locations, we believe existing laws provide the flexibility to address them—for example, through targeted retention incentives or special rates.

In addition, the excessively generous pay computation the bill would provide would result in FLSA-exempt firefighters reaching the annual premium pay cap much more rapidly, particularly those at higher grades. Because employees may be required to work even after the annual cap is reached, this can generate employee dissatisfaction.

Second, this change in pay formula would not lead to equity among various groups of Federal employees who face similar challenges. Other Federal employees who are temporarily assigned to geographically isolated worksites are placed in a non-pay status when they are relieved from duty. Therefore, we believe paying wildland firefighters for periods of rest and sleep would create inequities for other Federal employees receiving assignments away from home. Also, we believe it would be inappropriate to provide hazardous duty pay for sleep and rest periods.

We are aware that Federal wildland firefighters sometimes serve side by side with other firefighters who at times may be paid higher amounts, and we understand how this creates dissatisfaction. While comparability is always a factor in establishing pay for Federal workers, we must be concerned with not only the balance between external employees and those within the Federal community, but also with the internal balance between similarly situated groups of employees. The Federal employee is only guaranteed a fair reimbursement, not the highest reimbursement. However, even if one were to compare, Federal wildland firefighters sometimes are paid higher amounts than other wildland firefighters in both the private and public sectors.

Our third responsibility is to assure that taxpayer dollars are spent wisely. Again the pay proposals of H.R. 408 do not meet this test. As stated previously, many adjustments are made to the pay of wildland firefighters while they are working at the site of the fire. This includes both generous hazard pay and overtime pay. Under current law, a wildland

firefighter can receive total pay for a week that is three to four times his or her regular weekly rate of basic pay. Depending upon the work schedule, this legislation could increase overall pay in a given week by as much as 100 percent over amounts payable under current law. Since there is no compelling evidence of widespread staffing problems, we don't see a basis for asking taxpayers to fund the kind of large pay increases that H.R. 408 would produce.

Section 3 of the bill would make hazardous duty pay received by firefighters basic pay for retirement purposes. Again this provision does not meet the three principles governing our review of the bill, and therefore we strongly oppose that section of the bill, as well.

The proposed provision does not meet the test of being good public policy when viewed independently. Retirement annuities are intended to replace a proportion of an individual's income earned consistently over the course of a career. For that reason, hazardous duty pay is one of many things explicitly excluded from the statutory definition of basic pay. While there are a few enumerated exceptions to the general rule that premium pay is not basic pay, they are limited to amounts that generally are paid at a consistent and predictable rate, not only from day to day and week to week, but over the course of a typical employee's career. In these circumstances, retirement deductions are made over an entire career, and the rate of pay used in the annuity computation is representative of career pay levels; this provides equitable treatment for employees and protects the solvency of the Civil Service Retirement Fund.

This is not the case for hazardous duty pay. Indeed, one of the features of hazardous duty pay is its inconsistency. It varies from workday to workday, from pay period to pay period, and over the career of an employee. Some years there are many more fires than others, and so there is more time in hazardous duty pay status. Moreover, as employees reach more senior status, they are more likely to enter positions in which they are less likely to be actively involved in hazardous work. Should hazardous duty pay be included in retirement basic pay, these inconsistent and unpredictable payment patterns would result in some employees receiving a windfall in their retirement. On the other hand, other employees would be shortchanged, receiving no additional annuity even after having paid additional retirement deductions for many years.

For example, if an employee retires at the end of a 3-year period in which he or she received greater than usual hazardous duty pay, his or her average salary would be artificially high by comparison with his or her overall career earnings. Not only would this be a windfall to the employee, such an arrangement would make individuals more likely to retire at such times, thus creating staffing difficulties. On the other hand, an experienced employee who works many seasons paying retirement deductions on hazardous duty pay and who advances to an administrative or managerial position could be disadvantaged. While such an employee would have paid substantial additional retirement deductions on an irregular basis over the course of his or her career, the employee would receive no consideration for such payments in the annuity computation, if the hazardous duty was outside of the high-3 period.

Second, crediting hazardous duty pay for retirement purposes would create substantial inequities between the wildland firefighters and the broader community that also receives hazardous duty pay but is not credited with that pay for retirement purposes.

The provision also fails the third test of being a prudent use of taxpayer dollars. Incorporating these amounts in the calculation of annuities will result in unfunded pension liabilities and will require additional taxpayer dollars.

Section 4 of the bill is also of significant concern. Section 4 of the bill would make those changes effective immediately after enactment of the bill. Making the changes in the bill effective upon enactment is impractical for a variety of reasons relating to the notification of agencies and units in the field, the preparation and publication of regulations, and the reprogramming of payroll and retirement computer systems.

For all of the reasons stated above, the Administration strongly opposes H.R. 408.

That concludes my testimony, and I would be pleased to respond to any questions the subcommittee may have.